HIGH COURT OF CHHATTISGARH, BILASPUR

Single Bench: Hon'ble Shri Dilip Raosaheb Deshmukh, J.

Second Appeal No. 185 of 2007

Appellants (Defendants No.1)	:	1 a.	Jawahir aged about 55 years s/o Late Jhurai Gond
	:	b.	Dukhan Bai
	:	c.	Maniya Bai
	:	d.	Janiya Bai.
			All d/o Late Jhurai Gond
	:	2.	Bhawar Singh s/o Jailal Gond aged about 46 years.
			All r/o Village Naka, PS. Marvahi, Tahsil Pendra road, District Bilaspur C.G.

Versus

Respondents	:	1.	Prem Singh s/o Buddhu aged about 45 years caste Gond r/o Village Naka, PS. Marvahi, Tahsil Pendra road, District Bilaspur C.G.
(Defendant No.1)	:	2.	State of Chhattisgarh, Through Collector, Bilaspur (C.G.)

Second Appeal under Section 100 of the Code of Civil Procedure

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Present:-

Shri A. V. Sridhar, counsel for the appellants

ORAL ORDER

(Passed on 19.11.2007)

Heard on admission.

2. The appellants are aggrieved by the judgment and decree dated 16.01.2007 passed in Civil Appeal No. 54-A/2006 by the Additional District Judge, Pendra Road, District Bilaspur whereby the judgment and decree

dated 03.08.2001 passed in Civil suit No. 31-A of 94 by the Civil Judge Class-I, Pendra Road dismissing the plaintiff's suit was reversed and a declaration of title in favour of the plaintiff/respondent No.1 and permanent injunction against the appellants herein was granted.

3. Learned counsel for the appellants did not dispute the following :

A) that Daulat, maternal grand father of respondent No.1 was the owner and title holder of the suit land and respondent No.1/plaintiff - Prem Singh is the son of Hisodia Bai, who was the daughter of Daulat.

B) in the absence of any evidence, oral as well documentary, the execution of gift by Daulat in favour of his daughter, Hisodia Bai were rightly held by both the Courts below as not proved.

C) that the appellants/defendants had failed to establish even a sembalance of title over the suit property.

4. Learned counsel for the appellants has assailed the impugned judgment and decree passed in Civil Appeal 54-A/2006 on the sole ground that although the defendants could not establish any sembalance of title over the suit property, yet the plaintiff/respondent No.1 could succeed on the strength of his own title and not on the weakness of the defendants' case. It was further argued that mutation of the name of the appellants/defendants over the suit land *prima facie* disentitles the plaintiff/respondent No.1 from the relief sought for.

5. Having considered the submission of the learned counsel for the appellants, I have perused the impugned judgment and decree. It is true that no evidence, oral as well as documentary, was led by the plaintiff/respondent No.1 to show that his mother, Hisodia Bai, had received the suit property by way of a gift through Daulat yet the lower appellate Court has recorded a finding that even if this fact is not established, Daulat was admittedly the owner and title holder of the property in question and Hisodia Bai being his daughter was entitled to the same, and therefore, the plaintiff/respondent No.1, being the son of Hisodia Bai, had a better title over the suit property as

against the defendants, who had failed to establish any sembalance of title over the suit property.

6. On perusal of the record of Civil Suit No. 31-A of 94 also, it is seen that in the order dated 21.10.1992 passed by the Naib Tahsildar, it was mentioned in paragraph 3 that the suit land was in possession of Prem Singh. Parties were directed to approach the Civil Court by the said order. In appeal before the S.D.O., the order Ex.P.2 was passed on 16.03.1994 which also substantiates the possession of Prem Singh over the suit land. Defendant Jhurai Singh had admitted in his statement Ex.P.3, recorded by Naib Tahsildar, that Prem Singh was in unauthorized possession of the suit land. Ganga Prasad, witness for the appellant/defendant also admitted in paragraph 7 that house and *Badi* of Prem Singh was situated on the land which originally belonged to Daulat and after the death of Buddhu, Prem Singh was alone cultivating the suit land. In this view of matter, the finding recorded by the lower appellate Court that Buddhu, husband of Hisodia Bai and on his death, Prem Singh was in possession of the suit land, is duly substantiated by the record. Since admittedly the appellants/defendants have no sembalance of title over the suit land and the plaintiff/respondent No.1, being the maternal grand son of Daulat, had title over the suit property by succession even though execution of gift by Daulat in favour of Hisodia Bai was not established, the learned lower appellate Court has rightly granted a decree for declaration of title of the plaintiff/respondent No.1 over the suit property as also granted a permanent injunction against the appellants/defendants.

7. In this view of the matter, no substantial question of law arises for determination of this appeal. Accordingly, the appeal is dismissed at the stage of admission.

8. In view of the above, I.A.No.01 for stay is also dismissed.

Sd/-
Dilip Raosaheb Deshmukh
Judge

Anjani